

BEARD OIL CO.

IBLA 86-408, et al.

Decided April 28, 1987

Appeals from decisions of the Eastern States Office, Bureau of Land Management, holding noncompetitive oil and gas lease offers for acquired lands for rejection and requiring additional information. ES-34652 (Mich.), et al.

Reversed and remanded.

1. Appeals -- Contests and Protests: Generally -- Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases: Offers to Lease -- Rules of Practice: Appeals: Dismissal -- Rules of Practice: Protests

The Board will not dismiss as interlocutory an appeal from a BLM decision which held the appellant's oil and gas lease offers for rejection and required correction of a perceived regulatory defect, but instead will adjudicate the appeal where no useful purpose would be served by remanding the case to BLM.

2. Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases: Description of Land -- Oil and Gas Leases: Noncompetitive Leases -- Oil and Gas Leases: Offers to Lease -- Regulations: Interpretation

BLM may not reject a noncompetitive oil and gas lease offer for surveyed acquired land which is not described by acquisition tract number where the pertinent regulation, 43 CFR 3111.2-2(c), does not unambiguously require disclosure of line or case numbers assigned by the Forest Service to the land and the land is otherwise described by aliquot part.

APPEARANCES: John R. Brown, Assistant Vice President, Beard Oil Company, Oklahoma City, Oklahoma, for appellant; Jason R. Warran, Esq., Washington, D.C., for intervenor Wilfred Plomis; Kenneth G. Lee, Esq., Office of the Solicitor, U.S. Department of the Interior, Alexandria, Virginia, for the Bureau of Land Management.

## OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Beard Oil Company has appealed from four decisions of the Eastern States Office, Bureau of Land Management (BLM), holding its noncompetitive oil and gas lease offers for acquired lands for rejection because it had "failed to identify the requested land by acquisition number in addition to aliquot part, as required by 43 CFR 3111.2-2(c)." 1/ In addition, each BLM decision then provided:

Priority of the offer will be determined as of the date and time the required information is filed. Failure to submit the required information will result in rejection of your offer without further notice. This decision will become final 30 days from receipt in the absence of an appeal. You have the right to appeal to the Board of Land Appeals \* \* \*.

[1] Before addressing the substantive issue raised by these appeals, we must discuss a procedural matter. In addition to holding appellant's lease offers for rejection, BLM required appellant to submit certain information, i.e., the acquisition tract numbers, within 30 days of receipt of the decisions, failing which appellant's lease offers would be rejected "without further notice." BLM thereby afforded appellant a 30-day period of time for compliance with 43 CFR 3111.2-2(c), with priority determined as of the date of compliance. There was nothing improper with BLM's "holding for rejection" approach, which has been sanctioned by the Board in a number of cases. See, e.g., Carl Gerard, 70 IBLA 343 (1983). In such circumstances, a party has the option of complying with the request for information, complying under protest, or not complying within the 30-day period and then appealing from BLM's final rejection. Id. at 346. However, there is one crucial aspect of "holding for rejection" cases which BLM failed to recognize in this instance, i.e., such a BLM decision is interlocutory and, therefore, not properly the

1/ The case involves the following noncompetitive oil and gas lease offers, all of which were filed over-the-counter:

	<u>IBLA No.</u>	<u>Lease Offer</u>	<u>Date Offer Filed</u>	<u>Date of BLM Decision</u>
86-408	ES-34652(Mich.)		Jan. 30, 1985	Jan. 14, 1986
86-426	ES-34664(Mich.)		Feb. 5, 1985	Jan. 21, 1986
86-427	ES-34456(Mich.)		Dec. 20, 1984	Dec. 30, 1985
	86-860	ES-33913(Mich.)	Sept. 21, 1984	Feb. 13, 1986

Appellant's lease offers were filed pursuant to section 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1982), for 1,527.14 acres of acquired land situated in Lake and Wexford Counties, Michigan, within the Manistee National Forest. By order dated Jan. 12, 1987, the Board consolidated appellant's four pending appeals because they presented "identical legal and factual issues." We also granted a motion to intervene filed by Wilfred Plomis, who had filed conflicting oil and gas lease offers for the land. Plomis' answer states that his offers were filed "one working day after appellant's offers."

subject of an appeal to the Board. Rather, the 30-day appeal period would only commence upon the expiration of the 30-day compliance period. Id. Contrary to this holding, in these decisions BLM, in addition to providing for the 30-day compliance period, stated that the decisions would become final "in the absence of an appeal." BLM failed to recognize that the appeal period had not yet commenced and that, therefore, any appeal would be interlocutory.

In a similar case, George S. Haymans, III (IBLA No. 86-364), we issued a March 12, 1986, order which not only dismissed the appellant's interlocutory appeal without prejudice, but afforded the appellant the full remainder of his 30-day compliance period. 2/ In the present case, in a joint motion filed August 14, 1986, both the intervenor and BLM request the Board not to dismiss the case as we did in Haymans because, in view of intervenor's conflicting lease offers, "dismissal to give appellant a further opportunity to submit the information in question would be futile." 3/ The parties also state that this case represents the lead case and resolution of the substantive issue may affect well over 100 lease offers, adjudication of which is being held in abeyance. They request a decision by the Board on the merits.

Here, the Board does not consider itself precluded from reaching the substantive issue. Although appellant's appeals are premature, they also represent protests under 43 CFR 4.450-2 to action proposed to be taken by BLM, *i.e.*, rejection of appellant's lease offers. Randall J. Gerlach, 90 IBLA 338, 340 (1986). BLM should have adjudicated them as such in the first instance. Nevertheless, where no useful purpose would be served by remanding the case to BLM, the Board will adjudicate the case on its merits. See Robert C. LeFaivre, 95 IBLA 26 (1986). 4/ By doing so, we will not only avoid procedural detours which are unnecessary under the circumstances of this case, but we will provide a useful resolution of the substantive issue raised as well. See United States v. Napouk, 61 IBLA 316, 322 (1982).

[2] We turn, therefore, to the question of whether BLM may properly reject a noncompetitive oil and gas lease offer for acquired land where the offeror failed to describe the land by "acquisition number." The applicable regulation, 43 CFR 3111.2-2(c), provides that:

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2/ In Haymans, the appellant had filed his appeal 10 days after receipt of the BLM decision holding his oil and gas lease offers for rejection. We afforded appellant 20 days from receipt of the Board's order to submit the "necessary information."

3/ We disagree with the statement that giving appellant an opportunity to cure the defect in his lease offers would be "futile." It is possible appellant's offers could receive first priority if intervenor's lease offers were withdrawn or rejected.

4/ If we dismissed these appeals, thereby affording appellant a time for compliance, appellant would probably not comply or comply under protest and appeal either the rejection of its offers or the denial of its protests to the Board.

In those instances where the acquiring agency has assigned an acquisition number to the tract applied for, a description by such tract number shall be required in addition to the description otherwise required by paragraph (a) and in lieu of the description otherwise required by paragraph (b) of this section.

The two provisions referred to govern the primary manner in which land sought is to be described where the land is either surveyed (43 CFR 3111.2-2(a)) or not surveyed (43 CFR 3111.2-2(b)) under the rectangular public land survey system. Under 43 CFR 3111.2-2(a), where the land is surveyed and the description can be conformed to the survey, the offeror is required to describe the land sought "by legal subdivision, section, township, range and meridian." 5/ That is the situation herein. In this respect, appellant clearly complied with 43 CFR 3111.2-2(a) by describing the land sought by aliquot part. However, it is equally clear that appellant failed to provide any additional number identifying the land sought.

In its decisions, BLM stated that the term "acquisition tract number" is not limited in the regulation but that BLM interprets that term to include a "tract number, line number, acquisition number, case number or other identification number which is reasonably related to retrieving [from the surface management agency] the acquisition and title information for the applied for tract." BLM, therefore, held appellant's lease offers for rejection for failure to identify such a number. 6/

In its statement of reasons for its appeal (SOR), appellant contends that the term "acquisition number" is inherently ambiguous and that, therefore, 43 CFR 3111.2-2(c) cannot be relied upon to reject its lease offers, especially where appellant provided an adequate description sufficient for BLM and the Forest Service to process them. Appellant asserts that it had been informed by the Forest Service prior to filing its lease offers that no "acquisition numbers" had been assigned to land within the Manistee National Forest and that it had no reason to know that, in such circumstances, 43 CFR 3111.2-2(c) required identification of the "line" or "case" numbers otherwise assigned.

In its answer, at page 7, intervenor contends that 43 CFR 3111.2-2(c) is not inherently ambiguous but, consistent with the Board's reasoning in

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5/ Otherwise, the regulation provides:

"Where the description cannot be conformed to the public land surveys, any boundaries which do not so conform shall be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest existing official survey corner. If not so surveyed but within the area of the public and surveys, the lands shall be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected with a reasonably nearby corner of these surveys by courses and distances." 43 CFR 3111.2-2(a).

6/ The regulation, 43 CFR 3111.2-2(c), does not use the term "acquisition tract number." It does use the term "acquisition number."

Arthur E. Meinhart, 5 IBLA 345 (1972), provides a wide latitude for compliance by permitting identification of "virtually any number used by the acquiring agency in connection with the tract." Intervenor states that "instead of referring to any such number, appellant chose to refer to none," thereby violating the regulation. Id. Intervenor concludes that appellant's lease offers should be accorded no priority until appellant complies with 43 CFR 3111.2-2(c).

Departmental regulation 43 CFR 3111.2-2(c) was promulgated effective August 22, 1983. See 48 FR 33648, 33677 (July 22, 1983). No explanation for what was meant by the term "acquisition number" is contained in either the regulations or the preamble to the proposed or final rulemaking. 7/ However, we note that the previous regulations provided that, with respect to unsurveyed acquired lands, a description by "acquisition tract number" in an oil and gas lease offer "will be accepted." 43 CFR 3101.2-3(b)(3) (1972). It is clear that the term "acquisition tract number" from the prior regulation is synonymous with the term "acquisition number" in the current regulation. Indeed, the regulation in question refers to the acquisition number as "such tract number." 43 CFR 3111.2-2(c).

In Meinhart, we had occasion to consider what was meant by the term "acquisition tract number," then set forth in 43 CFR 3212.1(a)(iii) (1969) (a predecessor of 43 CFR 3101.2-3(b)(3) (1972)). We concluded that, given the fact that the term was not defined in the regulations and that the underlying purpose of the regulation was to permit the ready identification of the land sought, the reference in the appellants' lease offers to the "unit" numbers assigned to the land sought was permissible under the regulation. The "unit" number was the number assigned after acquisition of the larger tract to that subdivided portion of the tract desired by the appellants. 8/ We found the reference to such a number, rather than the number assigned to the larger tract, acceptable in part because it "afforded [a] very precise description of the lands included in the offers" and, thus, satisfied the purpose of the regulation. Arthur E. Meinhart, supra at 349. In addition, we relied on our conclusion that "the term 'acquisition tract number' is sufficiently ambiguous to have led appellants reasonably to believe that

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7/ We note that, as proposed, 43 CFR 3111.2-2(c) (47 FR 28567 (June 30, 1982)) provided that a description by "acquisition number" was required "in lieu of," rather than "in addition to," a description by aliquot part, where such a number had been assigned. No explanation was given for the change in the final rule. In any case, as a result, the requirement to provide a description by aliquot part, as well as to provide an "acquisition number," became mandatory.

8/ The significance of the "unit" numbers was fully described as follows:

"[I]n 1940 the Farm Security Administration purchased approximately 10,000 acres as a single unit from Mileston Planting and Realty Company. The total area was given the designation 'Tract No. 34'. Subsequently, this unit was subdivided into more than 100 parcels by the acquiring agency, which assigned consecutive numbers to each of the subdivided tracts and mapped the subdivided area to show the tracts according to their assigned numbers." Arthur E. Meinhart, supra at 347. (Footnote omitted).

their submissions were wholly in compliance with the requirement of the regulation." Id. at 350. In subsequent cases, we have recognized that other numbers assigned by a surface management agency may reasonably be regarded as "acquisition tract numbers." See Leon F. Scully, Jr., 79 IBLA 117 (1984) (parcel numbers); Bruce Anderson, 77 IBLA 376 (1983) (parcel number); see also Walter R. Wilson, Jr., 55 IBLA 96 (1981) (tract numbers). However, we have never specifically recognized "line" or "case" numbers, discussed infra, as "acquisition tract numbers."

In the present case, both appellant and intervenor agree that neither a tract number, a unit number, nor a parcel number was assigned by the Forest Service, either before or after acquisition, with respect to the land sought by appellant in the Manistee National Forest. Indeed, in a December 5, 1984, letter to one of appellant's consultants (Exh. A, SOR), the Director, Lands, Watershed and Minerals Management, Eastern Region, Forest Service, states that there are no "assigned tract numbers" in the Manistee National Forest, but that "numbers found on the title and encumbrance map of the status atlas are line numbers associated with information on the lands found on the tabular record," which numbers "assist" in the processing of "mineral applications." It is apparent that BLM initially regarded such a "line" number as an "internal [Forest Service] number that had no relation to recognized tract acquisition numbers." <sup>9/</sup> Letter, dated September 23, 1985, from Deputy State Director, Mineral Resources, Eastern States Office, BLM, to Director, Lands, Watershed and Minerals Management, Eastern Region, Forest Service (Exh. B, SOR at 1).

However, by memorandum dated October 4, 1985, the Director, Lands, Watershed and Minerals Management, Eastern Region, Forest Service, informed BLM that the Forest Service assigned not only line numbers but "case" numbers, which appear "only on the tabular page" of the status atlas in the case of acquired lands within an "aliquot" forest (Exh. D, SOR). The Director stated that "line" numbers, which also appear in the status atlas, "assist in quickly locating a land description," but are not the same as a case or tract number. <sup>10/</sup> The Director also stated that, "for aliquot or rectangular surveyed National

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<sup>9/</sup> In a June 4, 1985, decision, BLM dismissed a protest by intervenor, challenging issuance of another lease on the basis that the offeror had failed to identify an acquisition number, because the "Forest Service reports this [line] number to be an internal document number with no relation to a tract number" (Exh. A, Answer at 3). BLM subsequently reconsidered this decision and wrote to the Forest Service by letter dated Sept. 23, 1985 (Exh. B, SOR), requesting "assistance in clarifying the terminology associated with the identification or designation of tract acquisition numbers for National Forests within your region" (Exh. B, SOR at 1). The Forest Service responded by memorandum dated Oct. 4, 1985 (Exh. D, SOR).

<sup>10/</sup> By contrast, the Director stated that the "tract" numbers assigned to acquired lands in "metes and bounds" forests, which numbers appear on the "tabular and map pages of the status atlas," are "the only way to locate a specific acquisition" (Exh. D, SOR).

Forests, case number and legal subdivision (Township, Range and Section) are required." Id. (Emphasis in original.) BLM thereafter proceeded to reject lease offers, including appellant's, which failed to identify a "line" or "case" number, in addition to describing the land by aliquot part.

As noted supra, the term "acquisition number" is synonymous with the earlier term "acquisition tract number." It is clear that the Forest Service has never regarded a "line" or "case" number as a "tract number." Indeed, the term "tract number" is applicable to "metes and bounds" forests, whereas the terms "line" numbers and "case" numbers are applicable to "aliquot" forests (Exh. D, SOR). Moreover, in a February 6, 1986, letter, the Director, Lands, Watershed and Minerals Management, Eastern Region, Forest Service, clarified his October 4, 1985, memorandum, stating that the Forest Service "rel[ied] on aliquot part descriptions" and would process a lease offer "with or without a case or line number" (Exh. F, SOR at 1). Case or line numbers were described as "of no significant benefit to the Forest Service . . ." Id. It is also clear that BLM initially considered that the regulatory term did not cover "line" or "case" numbers. While in Meinhart we regarded the regulatory term as sufficiently broad to encompass the "unit" numbers assigned to the subdivided portions of the larger acquired tract, it should be remembered that the essential holding in Meinhart was that the regulatory term was ambiguous. Cf. Mapco Production Co., 70 IBLA 339 (1983).

The result of this ambiguity is that, as we said in Arthur E. Meinhart, supra at 350, "an applicant will not be held to have lost a statutory preference right for failure to comply with the requirement of a regulation unless that regulation is so clearly set out that there is no basis for his noncompliance." (Citations omitted.) See also James M. Chudnow, 82 IBLA 262 (1984); Elmer T. Stonecipher, 71 IBLA 203 (1983); Walter R. Wilson, Jr., supra at 104. It is precisely because the term "acquisition number" is ambiguous that we cannot fault appellant for failing to identify a number on its offers where there is neither a "tract" number nor any number previously recognized by the Board as an "acquisition tract number" assigned to the land sought.

Intervenor argues that appellant was required to identify some number on its lease offers and could not simply fail to identify any number, where 43 CFR 3111.2-2(c) requires identification of an "acquisition number." We disagree with this analysis. It assumes that there was an "acquisition number" which could be identified. While it is possible, in light of Meinhart, that an offeror could reasonably decide that "line" or "case" numbers are "acquisition numbers" within the meaning of the regulation, it is equally clear that an offeror could reasonably decide that "line" or "case" numbers are not "acquisition numbers" because of the admitted lack of clarity in the regulation. Given that fact, we must conclude that appellant did not violate the regulation. Appellant cannot be held accountable for failing, at the time it filed its lease offers, to act on the possibility that BLM or the Board might later construe the regulatory term to include "line" or "case" numbers.

The overall purpose of 43 CFR 3111.2-2, i.e., to require a description sufficient to identify the land sought in an acquired lands lease offer, has been fulfilled. In each case, appellant provided a description by aliquot

part. The offers were then processed by BLM and, in the case of lease offers ES-34652 (Mich.), ES-34456 (Mich.), and ES-33913 (Mich.), the Forest Service reviewed the offers and consented to leasing. We must conclude that the description by aliquot part was sufficient to identify the land sought by appellant. <sup>11/</sup> In such circumstances, we can find no justification for rejecting appellant's lease offers on the basis of failure to comply with an ambiguous regulation. See Beard Oil Co., 88 IBLA 268 (1985).

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are reversed and the cases remanded to BLM.

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Wm. Philip Horton  
Chief Administrative Judge

We concur:

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Bruce R. Harris  
Administrative Judge

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Will A. Irwin  
Administrative Judge

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<sup>11/</sup> We also question whether 43 CFR 3111.2-2(c) was ever intended to apply in the case of surveyed acquired land where the description could be conformed to the survey. As noted supra, the regulatory provision regarding acquisition tract numbers was at one time only applicable to unsurveyed acquired lands. See 43 CFR 3101.2-3 (1972). Indeed, as the Oct. 4, 1985, Forest Service memorandum illustrates, the term "tract" number is only applicable to unsurveyed acquired lands (Exh. D, SOR; see Answer at 2). It is quite possible that, in recognition also of the difficulty of identifying land which, although surveyed, could not be described in a manner which conformed to the survey, BLM required an additional description by acquisition tract number only in those cases in order to obviate any problem in identification of the land sought. There would be no comparable problem in the case of surveyed lands which could be conformed to the survey.